



COUNTY OF HUMBOLDT

For the meeting of: 1/5/2023

File #: 22-1790

To: Planning Commission
From: Planning and Building Department
Agenda Section: Consent

SUBJECT:

Jesse Carnes Conditional Use Permit
Record Number: PLN-11919-CUP (filed 12/15/2016)
Assessor's Parcel Number: 314-191-014
Maple Creek area

A Conditional Use Permit for the continued cultivation of 22,000 square feet (SF) of existing outdoor cannabis cultivation and 1,170 SF of ancillary propagation. Irrigation water is sourced from a 700,000-gallon rainwater catchment pond. Existing available water storage is 715,000 gallons. Estimated annual water usage is 175,000 gallons. Processing with a trim machine occurs onsite. Power is provided by two (2) generators and the applicant has long-term plans to switch to solar power.

RECOMMENDATION(S):

That the Planning Commission:

Adopt the resolution (Resolution 23-__). (Attachment 1) which does the following:

- a. Finds that the Planning Commission has considered the Addendum to the Mitigated Negative Declaration for the Commercial Medical Marijuana Land Use Ordinance that was prepared for the Jesse Carnes Conditional Use Permit); and
- b. Finds that the proposed project complies with the General Plan and Zoning Ordinance; and
- c. Approves the Jesse Carnes Conditional Use Permit subject to the recommended conditions of approval (Attachment 1A)

DISCUSSION:

Project Location: The project is located in the Maple Creek area, on the east and west sides of Black Creek Road, approximately 5.89 miles east to a private driveway from the intersection of Fickle Hill Road and Butler Valley Road, approximately 0.71 miles south to Black Creek Road, and 0.59 miles east to the property known to be in Section 6 of Township 04 North, Range 03 East, Humboldt Base & Meridian.

Present General Plan Land Use Designation: Residential Agriculture (RA40) and Timberland (T), Density: 40 and 40-160 acres per dwelling unit, Slope Stability: Low Instability (1) and High Instability (3).

Present Zoning: Timberland Production Zone with minimum building site area as shown on Subdivision maps of record, not to exceed one acre (TPZ-B-6).

Environmental Review: An Addendum to a previously adopted Mitigated Negative Declaration has been

prepared for consideration per §15164 of the State CEQA Guidelines.

State Appeal: Project is NOT appealable to the California Coastal Commission.

Major concerns: None.

Executive Summary: Jesse Carnes seeks a Conditional Use Permit to allow the continued cultivation of 22,000 square feet (SF) of existing outdoor cannabis cultivation and 1,170 SF of ancillary propagation, in accordance with Humboldt County Code Section 314-55.4 of Chapter 4 of Division I of Title III, Commercial Medical Marijuana Land Use Ordinance (CMMLUO). This project was originally noticed for hearing at the December 1, 2022, Planning Commission hearing. Due to noticing issues, the project was renoticed for the December 15, 2022, Planning Commission hearing. Prior to the hearing on December 15, 2022, a number of concerns were expressed by a neighboring property owner. Planning staff recommended continuing the project to the January 5, 2023, Planning Commission hearing to allow for a site visit, which included a meeting with Planning staff, the applicant and the neighbors. The site visit occurred on December 22, 2022. The concerns expressed and the outcome of the site visit are discussed throughout the Executive Summary, including a more depth discussion at the end of this section. Additionally, the applicant, through their agent, expressed concerns with conditions related to renewable energy and ancillary propagation space. Those concerns are expressed in the topic area below.

The cultivation is grown utilizing light deprivation techniques. The site is predominately designated as Timberland (T), including where cultivation occurs, with the northernmost portion of the subject property designated as Residential Agriculture (RA40) in the Humboldt County 2017 General Plan Update and zoned Timberland Production Zone with minimum building site area as shown on Subdivision maps of record, not to exceed one acre (TPZ-B-6). Cultivation currently takes place within two (2) cultivation areas: Cultivation Area #1 occurs within the northeastern portion of the subject site and comprises three (3) greenhouses (totaling 4,378 SF) and a separate greenhouse (1,170 SF) utilized for ancillary propagation; and Cultivation Area #2 occurs within the southeastern portion of the property and is grown within eighteen (18) beds (17,600 SF). Two (2) annual harvests are anticipated for a growing season that extends from March through November.

Processing occurs onsite. Drying and curing occurs within an existing 1,800-square-foot (60' x 30') dry building, located south of Greenhouse (GH) #3, and trimming (with a trim machine) occurs within the 800-square-foot (40' x 20') harvest storage building (as labeled on the Site Plan). A maximum of two (2) people may be onsite during peak operations. The operation is secured behind a security gate and property fencing, locked sheds and structures, and there are people onsite at all times.

Power for the project is currently provided by two (2) Honda generators; however, the applicant has long-term plans to install and convert to solar power for the project. As noted in the Cultivation and Operations Plan (Attachment 1), equipment required for the existing operation includes two (2) 7-kilowatt (kW) Honda EU7000 gas powered generators, two (2) exhaust fans (1,500 and 200 watts), six (6) small rotator fans, two (2) dehumidifiers, and T5 compact fluorescent lights. Per information provided by the applicant's agent in August 2022 (Attachment 4), the applicant is applying for grant funding under the County's Renewable Energy Program in order to implement an alternative solar power system onsite. Conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator(s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind,

and/or hydropower) sources by the end of 2026 (**Condition of Approval A.8**).

Planning staff met with the applicant and agent on December 27, 2022, to discuss concerns regarding this requirement. The applicant has applied for a grant to fund the transition to renewable energy, however, they are concerned regarding the timing and cost of the transition. They explained the applicant is committed to the change, but was unsure if the transition would be completed by the end of 2026. Planning staff said the condition of approval is consistent with conditions applied to other projects. Of note is that the lower cannabis cultivation site does not utilize power for any needs other than the water pump, which is proposed to be converted to a solar water pump on a sooner timeline.

Cultivation and Nursery Space: As noted above, the application is for 22,000 SF of existing outdoor cannabis cultivation utilizing light deprivation techniques and 1,170 SF of ancillary propagation. Currently, the nursery space equates to approximately 5.3% of the total cultivation area, which is consistent with what Planning division staff and the Planning Commission have found allowable in the past. (i.e., a nursery space of 10% of the cultivation area). Based on conversations with the applicant, the applicant is requesting 2,200 SF of nursery space (or 10% of the cultivation area). Based on the County's cultivation area verification, only 22,000 SF was in existence prior to the CMMLUO environmental baseline date of January 1, 2016. Please note that while the County identified 18,200 SF of existing outdoor cultivation and 3,800 SF of existing mixed light cultivation on the subject site prior to 2016, and is what the Interim Permit authorized, the agent's applicant indicated in October 2022 the mixed light cultivation was misclassified and no mixed light cultivation has occurred onsite (Attachment 4). Only outdoor cultivation is requested under the permit, and all references to mixed light cultivation in the Cultivation and Operations Plan and on the site plan shall be corrected (**Conditions of Approval A.6.-7**).

Although the parcel is over 5 acres in size, the cultivation and propagation areas are located on slopes less than 15%, and irrigation is source from a non-diversionary source (rainwater catchment), the subject property is zoned TPZ. As a result, new cultivation could not be considered on the subject parcel; therefore, additional square footage for propagation space is not supported by Planning staff. Planning staff recommends a condition of approval reducing the overall amount of cannabis onsite (including cultivation and propagation) to a maximum of 22,000 SF, consistent with County's cultivation area verification. Recommended conditions of approval have been included to require the applicant to revise both the site plan and operations plan accordingly to reflect a maximum of 22,000 SF of cannabis onsite at any given time, including cultivation and ancillary nursery space (**Conditions of Approval A.6-7**).

Planning staff met with the applicant and agent on December 27, 2022, to discuss concerns regarding this requirement. The applicant and agent stated allowing the 10% nursery space will not result in additional ground disturbance and the 10% nursery space will be accommodated within an existing greenhouse in the upper flat. Should the applicant want to 2,220 SF of the cultivation area to be used for immature plants, the applicant may choose to do so as long as total cultivation on-site does to exceed 22,000 SF. No new or modified structures or ground disturbance are authorized by this permit to accommodate additional nursery space. Planning staff explained this condition was consistent with what the Planning Commission has allowed for other projects.

Timber Conversion: Review of historic aerial imagery dating back to 2004 indicates the subject property contained open areas within the southeastern and northeastern portions of the property dating back to this time, and that the southern cultivation area occurs within a historic open area. However, it appears that timber removal occurred onsite between 2005 and 2009 within the northeastern and central portions of the site, and between 2010 and 2012, 2012 and 2014, and further expanded between 2018 and 2021 (removal of approximately 4 trees) within the northeastern portion of the site to accommodate the nursery greenhouse

within Cultivation Area #1 and the harvest storage building. No additional tree removal is proposed or authorized by this permit. The project is conditioned to require the property be evaluated by a Registered Professional Forester (RPF) to determine the amount of timber conversion that occurred prior to and after the CMMLUO baseline date of January 1, 2016, and obtain a Timber Conversion Report from a RPF and/or a Less Than Three Acre Conversion Exemption or Timber Conversion Permit from CalFire, as determined necessary by the RPF, to address previously unpermitted timber conversion. The applicant/owner will be responsible for mitigating the environmental impacts not analyzed in the environmental document prepared for the CMMLUO. The applicant/owner shall be required to re-stock an area onsite equivalent to the amount of area converted after the CMMLUO baseline date at a rate of 3:1. Additionally, the project is conditioned to require preparation of a Restocking Plan within one year of project approval and implement the Restocking Plan within a period of two (2) years, should any timber conversion be determined to have occurred after the CMMLUO baseline date. The Restocking Plan shall include details on the locations and total areas to be restocked, the type, number, and spacing of the plantings, and a monitoring plan for three (3) years which includes performance evaluations, performance standards, and contingency measures should performance standards not be met. The Report shall include monitoring and reporting requiring a minimum of 3 years of monitoring at an 85% success rate and submission of annual monitoring reports at the time of the annual inspection (**Condition of Approval A.11**).

Planning staff met with the applicant and agent on December 27, 2022, to discuss concerns regarding this requirement. According to the applicant, any trees removed were 8 dB in height or less and mostly brush was cleared for site improvements. One larger tree that was dead or diseased was removed near the nursery greenhouse. The applicant does not support inclusion of this condition for those reasons. Performance standards for the Commercial Medical Marijuana Land Use Ordinance (CMMLUO) requires that any timber removal on parcels zoned TPZ require the applicant to secure the services of a RPF to evaluate site conditions and conversion history for the property and provide a written report to the Planning Division containing the RPF's recommendation as to remedial actions necessary to bring the conversion area into compliance with provisions of the Forest Practices Act. Additionally, because the Mitigated Negative Declaration (MND) for the CMMLUO prohibited any timber conversion, the RPF report is required to evaluate any timber removal after January 1, 2016, and mitigated as necessary.

Water Resources: Estimated annual water usage is 175,000 gallons (7.95 gal/SF), based on information provided by the applicant's agent in August 2022 (Attachment 3). Water for irrigation is provided by an approximately 700,000-gallon natural, off-stream pond, located north of Cultivation Area #2. Existing available water storage is 715,000 gallons in the pond and three (3) 5,000-gallon hard-sided tanks. As indicated on the site plan, a point of diversion and a spring are utilized for domestic use, and a *Right to Divert and Use Water* (Registration ID H500793; Certificate No. H100150) was issued by the State Water Resources Control Board (SWRCB) in July 2018 for use of a point of diversion from the Mad River. Because water from the pond is used on the same land where surface water drains back to the pond, an appropriative water right from the SWRCB is not required. The applicant has filed an Initial Statement of Water Diversion and Use (ISWDU) with the SWRCB (ID S025878). The ISWDU is required by the SWRCB to report use of riparian rights. The applicant shall report use of water from the pond annually as required by the SWRCB (**Condition of Approval A.12**).

An assessment of the capture potential of the existing rainwater catchment pond was completed to determine if adequate water supply is and would continue to be available to serve the project. The average rainfall for the project area is 56.97 inches, based on averaging rainfall values from 2010 through 2020 as recorded by PRISM Climate Group. Impermeable surfaces such as roofs, driveways, etc. in general allow for about 620 gallons of rainwater catchment per 1,000 SF for every inch of rainfall or 0.62 gallons per 1 SF. For a conservative assessment, this general rule was utilized, based on the approximate surface area of the pond, and did not

account for run-off from the surrounding topography. Based on information provided by the applicant's agent in November 2022 (Attachment 4), the pond is approximately 206 feet in length and has a surface area of approximately 17,000 SF. Based on the pond's surface area of 17,000 SF, and an average rainfall amount of 56.97 inches, the pond's potential capture amount totals approximately 600,464 gallons per year, on average. The potential annual rainfall catchment amount (600,464 gallons) equates to approximately 343% (or more than three times) of the annual water amount utilized by the project (175,000 gallons). As such, Planning staff believes there will be sufficient water captured within the existing pond, even during below-average rainfall years, and in storage to meet the needs of the project. Since sufficient water is available in storage and the existing rainwater catchment pond to adequately serve the project, this permit does not authorize the use of the point of diversion or spring for irrigation. Conditions of approval require the applicant to monitor water use from the pond and water storage tanks annually to demonstrate there is sufficient water available to meet operational needs (**Condition of Approval A.22**).

A Final Streambed Alteration Agreement (SAA; Notification No. 1600-2016-0517-R1) was issued by the California Department of Fish and Wildlife (CDFW) in January 2017 for three (3) encroachments, including the two (2) points of diversion noted above (Mad River and hillside spring seep), as well as a point of diversion from the off-stream pond. All encroachments are noted to be for water diversion for domestic use and irrigation, and work associated with the diversions will include use and maintenance of the water diversion infrastructure. Regarding the pond, the Final SAA requires the applicant measure the water level within the pond to ensure the pond will not be dewatered. If the pond water level drops more than 4 feet from May 15 to October 1 of any year, the Final SAA requires CDFW be notified. On December 14, 2022, Planning staff received an email from CDFW that indicated the Final SAA is expired and the applicant will need to notify CDFW to continue use of the surface water diversions (see Attachment 5E). The project is conditioned to require the applicant continue comply with all requirements of the Final SAA and comments received from CDFW dated December 14, 2022, requiring the applicant to extend the CDFW Agreement (**Condition of Approval A.13**).

The lower portion of subject site is within a FEMA mapped 100-year flood zone. The existing project will not alter the existing flood area, does not propose any new residential or civic uses, and will not result in any hazardous industrial uses within the existing flood zone. Agriculture is an allowable use in flood zones. Temporary hoop houses will be removed from the site between October 16th and April 14th or will be elevated outside of the flood zone as determined by a qualified professional (**Conditions of Approval A.20**). The proposed project will not store hazardous or acutely hazardous materials on site that could be cause for environmental harm during a flooding event. The project site is approximately 16 miles east of the coast, and approximately 370 feet above mean sea level, thus, is outside the areas subject to tsunami run up. Lastly, although the project site is within a mapped dam or levee inundation area, the activities proposed as described herein would not contribute to increased development risk as this is a non-industrial operation focused on seasonal operations between spring and early fall months outside of the rainy season.

A Water Resource Protection Plan (WRPP; WDID 1B16444CHUM) was prepared by Timberland Resource Consultants for the subject site in August 2016 (Attachment 3) in compliance with the North Coast Regional Water Quality Control Board (NCRWQCB) Order No. R1-2015-0023. The WRPP assesses compliance with the required elements and standard conditions established in the Order to protect water quality from cannabis cultivation and related activities. As noted in the WRPP, both cultivation sites are located on a flat meadow with less than 5% slope and are 150 and 190 feet from the Mad River, respectively. No stream crossings are located onsite. Inspection of the road network found it to be intact and adequately drained, and no unstable features were observed onsite. Additionally, no irrigation runoff was present during the inspection, nor was there evidence that it had occurred in the past. All construction materials were also found to be organized and stored away from watercourses. Only one (1) item is recommended to be implemented to meet the requirements of the

Order, which includes providing secondary containment for the onsite fuel canisters. The project is conditioned to require the applicant to implement all remaining corrective actions contained in the WRPP (**Condition of Approval A.15**). Additional conditions of approval require the applicant to comply with the State Water Resources Control Board Cannabis Cultivation Policy, which includes development and implementation of a Site Management Plan (**Condition of Approval A.16**).

Biological Resources: Per review of CDFW’s California Natural Diversity Database (CNDDDB) in August 2022, the northeastern cultivation area is located within, and the southern cultivation area is located immediately adjacent to potential habitat for the North American porcupine (*Erethizon dorsatum*). The nearest NSO activity center is located approximately 0.37 miles from the nearest cultivation area, with the nearest NSO sighting located approximately 0.29 miles away.

Power for the project is provided by two (2) 7-kilowatt (kW) Honda EU7000 gas powered generators, with a 35 kW Kohler propane generator utilized for domestic use only. In addition to the generators, equipment required for the existing operation includes two (2) exhaust fans (1,500 and 200 watts), six (6) small rotator fans, two (2) dehumidifiers, and T5 compact fluorescent lights. Artificial lighting is utilized for the ancillary propagation area. Per the Cultivation and Operations Plan (Attachment 3), the generators are utilized for project activities between March and May, and between August and November, per the table below:

Table 1. Estimated Monthly Generator Usage (in hours)

Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
0	0	336	105	105	0	0	168	168	168	168	0

Total: 1,218 hours

Comments were received from CDFW in September 2017, which referenced the Final SAA issued in January 2017 (Attachment 3); requested a qualified biologist conduct appropriate surveys in all areas that may be potentially impacted by the project; requested protocol level surveys (two-year) by an experienced wildlife biologist to determine NSO presence or assume presence and modify the project to exclude mixed-light cultivation to avoid disturbance of habitat. The applicant clarified the mixed light cultivation was misidentified and all cultivation is outdoor. Artificial lighting would only be used for propagation. With the cultivation method being outdoor and the inclusion of the noise and light attenuation measures, Planning staff assumed presence of NSO, therefore, no protocol surveys are required (**Conditions of Approval A.18 and A.19**). CDFW requested the applicant provide a Bullfrog management Plan to CDFW due to the onsite pond, which is included as a condition (**Condition of Approval A.14**). ; and condition the project to ensure that cultivation is relocated a minimum of 150 feet from the pond. In follow up comments received in May 2019, CDFW requested a wetland delineation, as cultivation appears to be located immediately adjacent to an identified “natural pond”, which CDFW interprets as a wetland. Additionally, CDFW requested inclusion of standard noise and light attenuation measures to minimize potential impacts on biological resources, including NSO (**Conditions of Approval A.18 and A.19**).

An Aquatic Resources Delineation was performed by Kyle Wear, Botanical Consultant, in December 2021 (Attachment 4), to assess the subject site for wetlands and other aquatic resources. Per the Report, the lower terrace, which is mapped as Riverine (R3USC) in USFWS’ National Wetlands Inventory and the Humboldt Web GIS, was determined not to be Riverine habitat or include wetlands. It is noted to be the historic channel of the Mad River, but is expected to have surface water only during a severe flood event. While portions of the terrace have hydrophytic vegetation, there are no indicators of hydric soil or wetland hydrology. According to the Aquatic Resources Delineation and the site plan, the cultivation areas and associated infrastructure are

located 100 feet or more from the Mad River and the natural pond, which is consistent with required setbacks described by the Streamside Management Area and Wetlands Ordinance (SMAWO). No recommendations are provided in the Report. An email dated October 27, 2022, was sent to CDFW that included the wetland delineation (see Attachment 5). No additional comments were received.

Noise and light attenuation measures are required for the project. As previously described, the applicant has long term plans to switch to alternative (solar) power, and conditions of approval require the applicant to submit an energy use plan that describes the power demand for the project that includes a description of what power is required for (e.g., propagation, cultivation, and processing) and how much power is required on a monthly and annual basis. The energy plan shall also include a description of the generator(s) used to meet the power demand and state how the size of the generator is reasonable based on the power demand. The generator (s) used to support operations shall not be larger than required to meet operational needs. The plan shall also describe how the operation will transition to use of 80% renewable energy (e.g., solar, wind, and/or hydropower) sources by the end of 2026 (**Condition of Approval A.8**). In addition, the project is conditioned to ensure the combination of background, generator and greenhouse fan, or other operational equipment created noise, meets the noise level threshold of a maximum of 50 decibels from the noise source or edge of habitat, whichever is closer. Conformance will be evaluated using current auditory disturbance guidance prepared by the United States Fish and Wildlife Service (USFWS). Generators are also required to be located at least 200 feet from the onsite streams and placed within noise containment structures (**Condition of Approval A.18**). Additionally, the applicant is required to ensure all lighting meets International Dark Sky Association standards for Lighting Zone 0 and Lighting Zone 1, be fully shielded, and designed and installed to minimize off-site lighting (**Condition of Approval A.19**).

Furthermore, the conditions of approval require the applicant to refrain from using synthetic netting, ensure refuse is contained in wildlife proof storage and refrain from using anticoagulant rodenticides to further protect wildlife (**Conditions of Approval A.20-21 and B.4-7**). In addition, due to the off-stream pond located on the subject site, the project is conditioned to require the applicant coordinate with CDFW to determine if a Bullfrog Management Plan is required and meet the annual reporting requirements, install an overflow spillway to the off-stream pond that will withstand a 100-year flood event and exit ramps to the off-stream pond to prevent wildlife entrapment (**Condition of Approval A.14**), and not stock the pond with fish without written permission from CDFW (**Ongoing Condition of Approval B.24**). As proposed and conditioned, the project is consistent with CMMLUO performance standards and CDFW guidance and will not negatively impact NSO or other sensitive species.

Access: Access to the site and two cultivation areas is via two driveways off Black Creek Road (which traverses the site) to Butler Valley Road to Fickle Hill Road. Butler Valley Road and Fickle Hill Road are maintained by the County and are included on the County's list of County-maintained roads that meet (or are equivalent to) road Category 4 standards for cannabis projects. Black Creek Road is privately maintained. A Road Evaluation Report was prepared by the applicant in January 2018 (Attachment 3) for a 7.6-mile segment of Butler Valley Road from Butler Valley Road (at its intersection with Fickle Hill Road) to Black Creek Road and for a 1.4-mile segment of Black Creek Road from its intersection with Butler Valley Road. Per the Report, both road segments were noted to be developed to the equivalent of a road Category 4 standard.

Per comments received from the Department of Public Works, Land Use Division, in May 2019, Black Creek Road is noted to already be paved at its intersection with Butler Valley Road. As such, no improvements by Public Works are requested.

A condition is included requiring within 1 year form the effective date, the applicant shall take steps to form or

join a Road Maintenance Association for the maintenance of the privately maintained portions of the access roads to the project site located on Assessor's Parcel Number: 314-191-014. The necessary steps include sending notices to all road users of the requirement to form a Road Maintenance Association and conducting a meeting with the users of the road, especially those engaged in commercial cannabis activities to discuss formation of the Road Maintenance Association. The applicant shall provide evidence, including notice, meeting minutes, and the decision as to whether a Road Maintenance Association is being formed to show this effort. In the even the applicant is unable to coordinate formation of a Road Maintenance Association, the applicant shall pay fair-share cost for maintenance of the road to any road user engaged in maintaining the road (**Conditions of Approval A.21**). See discussion below under 'Public Comments' for additional information.

Consistency with Humboldt County Board of Supervisors Resolution No. 18-43: Planning staff determined approval of this project is consistent with Humboldt County Board of Supervisors Resolution No. 18-43, which established a limit on the number of permits and acres which may be approved in each of the County's Planning Watersheds. The project site is located in the Mad River Planning Watershed, which under Resolution 18-43 is limited to 334 permits and 115 acres of cultivation. With the approval of this project the total approved permits in this Planning Watershed would be 74 permits and the total approved acres would be 27.312 acres of cultivation.

Public Comments: Public comments were received from an adjacent property owner with concerns regarding the following: generator use, proximity to the Mad River floodplain, cumulative effects, road use and maintenance, wetlands, historic cultivation area and inspections. The following discussion addresses the comments received and additional discussions with Planning staff, the applicant and adjacent property owners that occurred during a site visit to the subject parcel on December 22, 2022.

Generator Use: Comments received included concerns with the noise from the generators as there are two generators on-site to power fans, dehumidifiers, and lights. There is a generator on-site to power the residence. According to the applicant and confirmed at the site visit on December 22, 2022, the generator used to support cultivation is located on the upper terrace and is not located within a containment structure. Noise associated with the lower terrace (Cultivation Area 2) is associated with a water pump. The applicant has applied for a grant to provide solar power for the pump, which should reduce the noise associated with the water pump. Conditions off approval require the generators to be contained and noise from all sources cannot exceed 50 decibels (dB) at 100 feet from the noise sources, whichever is closer. Additionally, conditions of approval require the applicant to switch to 80% renewable energy as the primary energy source to support the project by the end of 2026. These conditions are typically applied to cannabis projects to meet performance standards required by the Commercial Medical Marijuana Land Use Ordinance (CMMLUO).

Proximity to the Mad River Floodplain: The lower portion of subject site is within a FEMA mapped 100-year flood zone. The project site is approximately 16 miles east of the coast, and approximately 370 feet above mean sea level, thus, is outside the areas subject to tsunami run up. Lastly, although the project site is within a mapped dam or levee inundation area, the activities proposed as described herein would not contribute to increased development risk as this is a non-industrial operation focused on seasonal operations between spring and early fall months outside of the rainy season.

Concerns were expressed that the hoopouses were permanent. The lower cultivation area (Cultivation Area 2) is comprised of metal-framed hoopouses with garden beds, which are located within the 100-year flood zone. All other structures and equipment associated with the operation (generators and where fertilizers and amendments are stored) are located on the upper terrace and outside of the flood zone. According to the Water Resources Protection Plan and confirmed by the applicant at the site visit on December 22, 2022, there are no

pesticides or herbicides used for the operation or approved for commercial cannabis use in general. There is small amount of fuel storage on the upper terrace in a shed that is required to have secondary containment per State Water Board requirements. The proposed project will not store hazardous or acutely hazardous materials on site that could be cause for environmental harm during a flooding event. Plants are irrigated using drip irrigation to conserve water and decrease any run-off. According to the applicant, a natural material is used to line the base of the beds to minimize soil and water loss. An annual inspection was performed by County staff on October 19, 2021, and it was noted each structure related to cannabis may need to conform to County flood elevation standards or be completely removed during the wet season. Condition of approval require the hoopouses to be removed from the site between October 16th and April 14th. Alternatively, the applicant can submit a Flood Elevation Certificate to the Building Department to demonstrate what height would be required to the raise the hoopouses out of the flood zone. The applicant would need to meet any additional flood-proofing requirements for the structures to remain. (**Conditions of Approval A.20**).

Cumulative Effects: Concerns were expressed regarding cumulative effects from cultivation sites in the Mad River watershed. Cumulative effects of projects within Humboldt County were analyzed by the Mitigated Negative Declaration (MND) prepared for the CMMLUO. The MND found that baseline conditions would be improved as historic operations would be regulated by State and local agencies. The project as designed conditioned represents an improvement from baseline conditions, including discontinued use of a surface diversion in the Mad River and mixed light cultivation, removal of hoopouses on an annual basis or proper design to meet flood zone requirements, proper storage of fertilizers and amendments, and noise and light attenuation measures to reduce noise and potential impacts to biological resources.

Road Use and Maintenance: The subject parcel is accessed by a Black Creek Road, a privately-maintained road. Comments received included concerns regarding maintenance of road due to increased traffic to the subject parcel. Staff was made aware that an adjacent property owner completes the annual road maintenance and there is a fee associated with the work. Conditions of approval require the applicant, within 1 year, to form or join the Road Maintenance Association (RMA) any pay fair-share costs associated with maintaining the roads. Costs would be determined by the RMA. As discussed with applicant and neighbor on the site visit on December 22, 2022, the applicant has contributed to the RMA in the past and individually funded some improvements as well. The applicant is required to provide evidence (e.g. receipts, meeting minutes, etc.) to the Planning Department to verify this condition is met (**Conditions of Approval A.21**).

Wetlands: Concerns regarding potential impacts to wetlands in the lower terrace were expressed to staff. An Aquatic Resources Delineation was performed in December 2021 (Attachment 4D) to assess the subject site for wetlands and other aquatic resources. The report determined the lower terrace is not Riverine habitat or include wetlands as defined in the U.S. Army Corps of Engineers Wetland Delineation Manual in the identification and classification of wetlands. This determination is consistent with the requirements of the Streamside Management and Wetlands Ordinance (SMAWO). Planning staff walked the subject parcel on December 22, 2022. No standing water or wetland plant species were observed near Cultivation Area 2 (lower terrace).

Historic Cultivation: Concerns regarding the size of the historic cultivation area were expressed to staff. The applicant has an Interim Permit (IP) for 18,200 SF of outdoor and 3,800 SF of mixed light cultivation. The historic cultivation area is verified by County staff prior to issuing the IP. The historic cultivation must have been on the subject parcel prior to January 1, 2016. The review of historic cultivation was completed using aerial imagery. Historic cultivation area is determined by using one year as the basis for the determination. For this project, the cultivation area was determined using aerial imagery for 2015 (see images provided in Attachment 4E). The review found that there was 18,200 SF of outdoor cultivation in two separate areas and 3,800 SF of mixed light cultivation in the upper flat. Total historic cultivation totals 22,400 SF consistent with

the amount authorized by the Interim Permit. This permit would authorize 22,000 SF of outdoor cultivation and no mixed light cultivation would be authorized.

Specially, public comments expressed concerns regarding historic cultivation on the lower flat. For this project, the existing lower cultivation area was determined using aerial imagery for 2015 (see image provided in Attachment 4E). This image appears to show the remains of pots and plant material in an aggregate area consistent with the issuance of the Interim Permit, confirming the applicant's assertion that cultivation of this amount occurred in mid-2015. Outdoor cultivation in the lower flat was reorganized into the temporary hoophouse structures between 2016 - 2020. Reorganization into greenhouses does not increase the total number of growing days and likely reduces water consumption due to the controlled environment and size of the plants, which would be smaller than plants using a full sun cultivation method. The hoophouses are temporary in nature and are required to be removed prior to October 15 annually. Therefore, Planning staff supports the reorganization of the outdoor cultivation into the temporary hoophouse structures. Conditions of approval require the applicant to obtain the necessary permits from the Building Inspection Division for the hoophouses (**Conditions of Approval A.9**).

Inspections: Concerns were expressed regarding the frequency of site monitoring and inspections to ensure operations are occurring as described by permit if authorized. A minimum of two inspections (one by State and one by County) occur annually and additional inspections could occur based on outcomes of annual inspections and/or complaints received.

Based on the discussion above, Planning staff determined that the concerns expressed are addressed by operational aspects and conditions of approval. The applicant is required to operate the project in accordance with the operations plan and conditions of approval, which results in an improvement to historic conditions both operationally and environmentally. Therefore, Planning does not recommend any project revisions or additional conditions at this time.

Environmental review for this project was conducted and based on the results of that analysis, staff finds that all aspects of the project have been considered in a previously adopted Mitigated Negative Declaration that was adopted for the Commercial Medical Marijuana Land Use Ordinance and has prepared an addendum to this document for consideration by the Planning Commission (See Attachment 2 for more information).

Based on a review of Planning Division reference sources and comments from all involved referral agencies, Planning staff believes that the applicant has submitted evidence in support of making all of the required findings for approval of the Conditional Use Permit (CUP).

OTHER AGENCY INVOLVEMENT:

The project was referred to responsible agencies and all responding agencies have either responded with no comment or recommended approval or conditional approval. (Attachment 5)

ALTERNATIVES TO STAFF RECOMMENDATIONS:

1. The Planning Commission could elect not to approve the project, or to require the applicant to submit further evidence, or modify the project. If modifications may cause potentially significant impacts, additional CEQA analysis and findings may be required. These alternatives could be implemented if the Commission is unable to make all of the required findings. Planning staff has stated that the required findings in support of the proposal have been made. Consequently, Planning staff does not recommend further consideration of any alternative.

2. The Planning Commission could also decide the project may have environmental impacts that would require further environmental review pursuant to CEQA. Staff did not identify any potential impacts. As the lead agency, the Department has determined that the project is consistent with the MND for the CMMLUO as stated above. However, the Commission may reach a different conclusion. In that case, the Commission should continue the item to a future date at least two months later to give staff the time to complete further environmental review.

ATTACHMENTS:

1. Draft Resolution
 - A. Conditions of Approval
 - B. Cultivation Operations Plan
 - C. Site Plan
2. Location Maps
 - A. Watershed Maps
3. CEQA Addendum
4. Applicant's Evidence in Support of the Required Findings
 - A. Water Resource Protection Plan
 - B. Final Streambed Alteration Agreement
 - C. Road Evaluation Reports
 - D. Aquatic Resources Delineation
 - E. Aerial Imagery to Determine Historic Cultivation Area
5. Referral Agency Comments and Recommendations
 - A. Building Inspection Division Response
 - B. Division Environmental Health Response
 - C. Public Works, Land Use Division Response
 - D. CAL FIRE Response
 - E. California Department of Fish & Wildlife Staff Correspondence
 - F. Humboldt Bay Municipal Water District Response

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